



U.S. Department of Justice

Environment and Natural Resources Division

DJ#90-5-2-1-07823

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**FOR SETTLEMENT DISCUSSIONS ONLY
NOT ADMISSIBLE AS EVIDENCE UNDER FED. R. EVID. 408**

August 2, 2006

VIA ELECTRONIC & U.S. MAIL

Scott R. Dismukes
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219-2788

Re: **In Re: S.H. Bell Company, East Liverpool, Ohio,**
NSPS Subpart OOO Settlement Discussion Issues

Dear Scott:

This responds to your letter of July 26, 2006, and addresses the issue of the scope and extent of NSPS Subpart OOO applicability to affected facilities defined by the regulation. On our July 20th telephone conference, Charmagne indicated she would provide you with specific determinations upon which EPA is relying for the contention that NSPS Subpart OOO applies to all affected facilities where crushing and grinding of non-metallic minerals is performed regardless of where in the plant the affected facility is located. This contention, however, is supported by EPA's long standing policy regarding applicability of NSPS Subpart OOO.


Attached to this letter is an EPA Notice of Policy, clarifying incorrect guidance and preamble language regarding the applicability of NSPS Subpart OOO to affected facilities, published at 62 Fed. Reg. 62953 (November 26, 1997). The Notice of Policy makes clear "that as long as crushing or grinding occurs anywhere at a non-metallic mineral processing plant, any affected facility listed in § 60.670(a) is subject to Subpart OOO regardless of its location within the plant." As you can see, since promulgation of the regulations, it has been EPA's policy and intent that affected facilities need not be part of a "mechanically connected production line" in order to be covered by the regulations, as long as crushing and grinding of the non-metallic minerals occur anywhere at the plant. Thus, all affected facilities, as defined in the regulation, used by S.H. Bell for the processing of the non-metallic mineral fluorspar prior to termination of crushing and grinding of that non-metallic mineral on July 1, 2001 are covered by NSPS Subpart

OOO. These affected facilities include, without limitation, bagging operations, storage bins, and enclosed truck or railcar loading stations. See 40 C.F.R. § 60.670(a).

As discussed on our July 20th conference, we propose that our next telephone conference be scheduled for September 6, 2006 at 10:00 am eastern time. Please let me know if that date and time are acceptable. As in the past, I will arrange for a U.S. DOJ call in number and passcode and e-mail that information to participants in advance of the call. Prior to that conference call, our understanding is that you will provide us with S.H. Bell's response to the NSPS Subpart OOO scope and extent issue, and information regarding S.H. Bell's handling and/or processing of the non-metallic minerals, salt, pumice, rutile mineral sand and vermiculite.

We look forward to our next telephone conference and hope that we can advance further toward settlement in this matter. If there are any questions regarding the issues discussed herein, please do not hesitate to contact me. Thank you again for your continued cooperation in this matter.

Sincerely,


Francis J. Biros
Trial Attorney

cc: Steven Paffilas, Assistant U.S. Attorney, N.D. Ohio
John Matson, U.S. EPA, Region 5
Charmagne Ackerman, U.S. EPA. Region 5

62 FR 62953-01, 1997 WL 730055 (F.R.)

RULES and REGULATIONS
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-5927-4]

Standards of Performance for New Stationary Sources; Standards of Performance
for Nonmetallic Mineral Processing Plants; Clarification

Wednesday, November 26, 1997

***62953** AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of policy; clarification.

SUMMARY: This action clarifies the applicability of the New Source Performance Standards for Nonmetallic Mineral Processing Plants (40 CFR part 60, subpart OOO). This action is necessary because of incorrect guidance and preamble language regarding the regulation's applicability to affected facilities in the nonmetallic mineral processing industry. The April 1991 Regulatory and Inspection Manual for Nonmetallic Mineral Processing Plants included the following incorrect statement: "Subpart OOO affected facilities begin with the first crushing or grinding operation at the plant." The same incorrect statement was made in a response to a comment in the preamble to the June 9, 1997, Federal Register document for the final amendments to subpart OOO.

Section 60.670(a) of subpart OOO lists the affected facilities in fixed or portable nonmetallic mineral processing plants. This list includes each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. The clear intent of the regulation is that all facilities listed in section 60.670(a) are subject to subpart OOO. While subpart OOO affected operations typically have crushers or grinding mills located at or near the beginning of the nonmetallic mineral processing line, this is not always the case (e.g., some plants may convey, screen or otherwise process materials without first utilizing a crusher located in the plant). Therefore, with this document, the EPA is clarifying that as long as crushing or grinding occurs anywhere at a non-metallic mineral processing plant, any affected facility listed in § 60.670(a) is subject to subpart OOO regardless of its location within the plant. EPA expects that plants that have not considered facilities prior to the first crushing or grinding operation as affected facilities, will now ensure that those affected facilities will meet all of the applicable regulatory requirements.

***62954** FOR FURTHER INFORMATION CONTACT: Mr. Scott Throwe at (202) 564-7013, Manufacturing, Energy, and Transportation Division (2223A), U.S. EPA, 401 M Street, Washington, D.C. 20460.

Dated: November 20, 1997.

Scott A. Throwe,

Environmental Protection Specialist.

[FR Doc. 97-30950 Filed 11-25-97; 8:45 am]

BILLING CODE 6560-50-P

62 FR 62953-01, 1997 WL 730055 (F.R.)
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